



Guidance on the removal of Church* and Foundation Governors

This guidance issued by Leicester Diocesan Board of Education covers the removal of:

- (a) all Foundation Governors appointed to Church of England Voluntary Aided, Voluntary Controlled and Foundation schools in Leicester diocese
- (b) all Directors and all members of Local Governing Bodies (LGBs) of church majority single Academy Trusts (ATs) and Multi-Academy Trusts (MATs) in Leicester diocese and
- (c) those directors and members of LGBs of church minority single ATs and MATs appointed by church bodies in Leicester diocese.

Note however that in all these categories special arrangements obtain in respect of ex-officio governors or directors, except that if a person is a member of an LGB ex-officio then he can be removed in the same way as any other LGB member.

The model articles for ATs and MATs have changed several times since the inauguration of the modern academies program. The guidance below is therefore only general, and detailed advice must be sought when an academy wishes to remove a director or a member of an LGB.

In all cases the removal of a governor or director is a most serious matter and professional advice must be obtained both as to the appropriateness of removal and as to the procedure to be followed. All church schools and academies are advised to consult the DBE before taking any formal steps.

Key points:

- The majority of Foundation Governors for the church voluntary and foundation schools in Leicester Diocese are **nominated** by the Incumbent/Parochial Church Councils (PCCs) and subsequently **appointed** by the Diocesan Board of Education (DBE). Some are appointed directly by the DBE and others appointed directly by PCCs. Individuals may be removed by the body that appointed them.
- All Directors (other than elected parent directors or ex-officio ones) of church majority ATs and MATs are appointed by the Members of the company and may be removed by them. In the most recent model articles Parent Directors (where they exist) may also be removed by the Members.
- All members (including parents) of LGBs in church majority MATs are appointed by the directors of the company and may be removed by them.
- All church directors of church minority ATs and MATs are appointed as set out in the relevant company articles. It will usually be the church Member who appoints these directors and may consequently remove them.

** church majority academies do not have foundation governors as such because all directors and all members of LGBs are appointed by the church.*

- The church members of any LGB in church minority MATs are appointed by the church Member of the company and may be removed by it.
- Incumbents are often the **ex-officio** governors of their local church school and may be ex-officio directors of their local academy. The former can only be removed at the request of the relevant Archdeacon. The latter do not form part of more recent academy model articles and may only be removed under the provisions of the Companies Act.
- Only the person with the power to appoint can remove an **appointed** Foundation Governor or a Director (although the Governing Body of a voluntary or foundation school or the Directors of an AT or MAT may disqualify a governor/Director who fails to attend meetings for 6 months without its consent).
- The system of removing **appointed** Foundation Governors is different to that for removing **ex officio** Foundation Governors to Governing Bodies of voluntary or foundation schools or ex-officio Directors of academies, but in either case any concerns should be raised in the first instance with the Diocesan Director of Education (DDE).
- If the DDE cannot resolve the issue, then in the case of a Foundation Governor of a voluntary or foundation or Director of an academy appointed by the DBE or its Umbrella Trust, the removal will be referred to the Board of Education's 'Supporting Church Schools' Committee and will follow the process outlined on page 2. Other appointing bodies are advised to follow a similar process after taking professional advice.
- Members of Local Governing Bodies in a Multi Academy Trust (MAT) are appointed by, and therefore can only be removed by, the Directors. In a church minority AT or MAT it is usually the church Member of the company that appoints and can remove. Also the directors of a MAT may vary the powers of LGBs (if their articles so permit) and may also decide to remove any or all LGBs in their company unless the articles prevent this (as is sometimes the case) in respect of church academies in church minority MATs).

Legislation

The legislation in respect of academies is different from that which obtains for voluntary and foundation schools, though the effect is much the same.

Academies are governed by their articles and by the Companies Act. If an academy seeks to remove a director then this can be done by the person or persons appointing the director using the procedure for removing directors set out in the Companies Act and acting under professional advice.

Schools are governed by the Education Acts and by the Regulations published under them. Governors of voluntary and foundation schools may be removed by the body or person who appointed them. Part 4 (Regulations 20-25) of The School Governance (Constitution) (England) Regulations 2012 sets out when a governor can be removed from the governing body. As at February 2016, the latest edition of DfE Statutory Guidance based on these regulations is the August 2015 edition. DBE Senior Staff will seek to ensure the Board of Education, via the relevant committee, is informed of any regulation or guidance on the removal from office of appointed governors.

NB. Legally, any decision made by any party to remove a governor or director could be subject to judicial review. It is essential to take professional advice.

Possible reasons for Removal

There are certain circumstances both in respect of academies and maintained schools under which a person is disqualified from being a director or governor respectively. These are most conveniently set out in the articles of ATs and MATs.

The Secretary of State also has certain powers set out in the Funding Agreements of academies and modified by the Church Supplemental Agreements of church academies.

Those responsible for appointing governors or directors may in principle remove them at will. However, it is LDBE's view that reasons for removal (as distinct from a decision not to re-appoint on completion of a term of office) should be outlined and the individual concerned has a right of response. Hence reasons for removal should normally be both serious and reasonable. No definitive list is possible or desirable but the following are the main areas that may be relevant:

- a serious breakdown of relationships for which the individual can reasonably be shown to be primarily responsible and which is impacting on the effectiveness of the governing body or the board of directors
- persistent actions or views that if implemented would lead to a breach of trust on the part of the appointing body or of the site trustees of the school
- a refusal to uphold the continuance or effectiveness of the religious character of the school or academy
- Responsibility for serious damage to the stability of the school through inappropriate action or public statement
- Violence on school premises (to persons or property)

Process for the Removal of a Foundation Governor or Director appointed by the DBE

Members of ATs and MATs must follow the procedure required by the Companies Act and the DBE will itself do so in relevant circumstances.

1. Consideration to remove an **appointed** Foundation Governor or director from office mid-term should be referred to the Board of Education's 'Supporting Church Schools' Committee.
2. As removal is a serious matter a minimum of 3 committee members from the 'Supporting Church Schools' Committee should consider the matter as a specially convened panel.
3. The Foundation Governor/director concerned will be informed in writing of the decision to refer the matter of their removal to the panel. They will be given the right, within 10 working days, to make written representations to them prior to a decision being made.
4. A meeting of the panel will, within 10 working days, be convened to discuss the case. The DDE shall attend for the purpose of advising and the meeting will be clerked.
5. The DDE will present the reasons for requesting the removal of the Foundation Governor/director. The panel will consider any written representation from the Foundation Governor.
6. The panel will make their decision, and, subject to any further process required by the Companies Act in the case of academies, the DDE will write, within 5 working days, to the Foundation Governor/director concerned and the clerk to the governing body, to convey the decision without giving details of the case.
7. Simultaneously the DDE will advise the following of the decision: the 'Supporting Church Schools' Committee, DBE, Parochial Church Council (PCC), Head Teacher, relevant Archdeacon and Governor Development Service, Leicestershire LA/Leicester City LA for record keeping purposes.
8. Subject to the provisions of the Companies Act in respect of academies, all parties will have 10 working days from receipt of the decision to exercise their right of appeal against the panel's decision. The appeal will be heard within a further 10 working days by 3 different members of

the Diocesan Board of Education. The decision of the appeal panel will be final. It will be communicated within 5 working days to the parties listed in 6 & 7 above.

Process for the Removal of a Director appointed by the Diocese of Leicester Educational Trust (DLET)

Members of ATs and MATs must follow the procedure required by the Companies Act and the DBE will itself do so in relevant circumstances.

1. Consideration to remove an **appointed** Foundation Governor or director from office mid-term should be referred to DLET's Directors.
2. As removal is a serious matter a minimum of 3 members from DLET should consider the matter. In the event that the Member of the MAT or AT is not a DLET Director, they should be invited to this meeting,
3. The director concerned will be informed in writing of the decision to refer the matter of their removal to DLET. They will be given the right, within 10 working days, to make written representations to them prior to a decision being made.
4. A meeting of DLET will, within 10 working days, be convened to discuss the case. The DDE shall attend for the purpose of advising and the meeting will be clerked.
5. The DDE will present the reasons for requesting the removal of the director. DLET will consider any written representation from the director.
6. DLET will make their decision, and, subject to any further process required by the Companies Act in the case of academies, the DDE will write, within 5 working days, to the director concerned and the clerk to the MAT/AT, to convey the decision without giving details of the case.
7. Simultaneously the DDE will advise the following of the decision: the 'Supporting Church Schools' Committee, DBE, Parochial Church Council (PCC), Head Teacher, relevant Archdeacon and Governor Development Service, Leicestershire LA/Leicester City LA for record keeping purposes.

Process for the Removal of an *ex officio* Foundation Governor at a Maintained school

1. The Archdeacon informs the clerk to governors in writing that he/she requests the governors to remove the ***ex-officio*** Foundation Governor, detailing the reasons why (copy to the Chair of the DBE Supporting Church Schools Committee and the DDE).
2. Simultaneously the Archdeacon informs the ***ex-officio*** Foundation Governor in writing that he/she has requested the governors to remove them from their post as ***ex-officio*** governor, detailing the reasons why.
3. The request for removal must be considered at the next full governing body meeting.
4. The request must appear as an item of business on the agenda (to be distributed at least 7 days in advance), usually in the form of a resolution.
5. The clerk gives the reasons for removal at the meeting.
6. The ***ex-officio*** Foundation Governor must be given the opportunity to give a statement in reply before they withdraw from the meeting

7. A vote must take place to agree (or not) the resolution (request) to remove the ***ex-officio*** Foundation Governor.
8. The removal must be confirmed by resolution at a second meeting, not less than 14 days after the first.
9. The confirmation must appear as an item of business on the agenda.
10. If the removal is confirmed, the clerk informs the ***ex-officio*** Foundation Governor in writing that the governors have agreed the removal.
11. Simultaneously the clerk confirms the decision to the relevant Archdeacon (copy to the DDE).
12. The Archdeacon liaises with the DDE to initiate the process to appoint a substitute governor.

Appendix to DBE document - removing Foundation Governors



Removal/Suspension of Governors

Removal – if a governor is removed from the Governing Body, he/she is no longer a governor on that Governing Body but is still eligible to be a governor.

Disqualification – if a governor is disqualified, he/she is no longer eligible to be a governor (Where the disqualification is for failure to attend meetings, the disqualification is limited to that particular school. This type of disqualification is limited to a 12-month period for foundation, LA, co-opted, community and partnership governors).

Suspension – if a governor is suspended, he/she is temporarily removed from the Governing Body. This is limited to six months.

1. Procedures for removing the Chair

Maintained Schools

The School Governance (Roles, Procedures and Allowances) (England) Regulations 2013 (updated January 2014) allow for a chair (or vice chair) of governors to be removed from office by the governing body, unless the chair has been nominated by the secretary of state. Informal resolution should always be attempted prior to the formal process (all schools).

1. The resolution to remove the Chair/Vice Chair must be a specific agenda item.
2. The agenda must be circulated seven clear days in advance.
3. The governor proposing the removal must at that meeting state his/her reasons for doing so and the chair or vice-chair must be given an opportunity to make a statement in response, before withdrawing from the meeting.
4. The Governing Body then vote by secret ballot on whether or not to accept the resolution.
5. If the Chair is removed a new Chair should be elected immediately.

Academies

Follow the process in the Articles of Association. In MATs (including DLAT) it is usually the Directors who appoint and therefore remove the Chair.

2. Removal of governors – who can remove and how:

Maintained schools

Part 4 of the School Governance (Constitution) (England) Regulations 2012 sets out when a governor can be removed from the governing body. Governors may be **removed by the body or persons who appoint them.**

The procedures are as for the removal of the Chair – but the decision to remove the governor must be confirmed at a second meeting no less than 14 days after the first meeting. At both meetings the removal of the governor in question **must** be an item on the agenda.

Elected parent and staff governors cannot be removed from office. **Appointed** Foundation governors have to be removed by the DBE and *ex officio* Foundation Governors can be removed at the request of the person to whom they are answerable, usually the Archdeacon

Academies

In a MAT, the Directors appoint, and therefore remove, Local Governing Body members.

Suspension of Governors

Maintained schools

Regulation 17 of the School Governance (Roles, Procedures and Allowances) (England) Regulations 2013 states that a Governing Body may suspend a governor for all or any meetings, for a fixed period of up to six months, only if one or more of the following grounds apply:

1. The governor, being a person paid to work at the school is the subject of disciplinary proceedings in relation to his or her employment.
2. The governor is the subject of proceedings in any court or tribunal, the outcome of which may be that he or she is disqualified from continuing to hold office as a governor under Schedule 4 to the School Governance (Constitution) (England) Regulations 2012.
3. The governor has acted in a way that is inconsistent with the ethos of religious character of the school and has brought, or is likely to bring, the school or governing body or the office of governor into disrepute.
4. The governor is in breach of the duty of confidentiality to the school or to any member of staff or to any pupil at the school.

These regulations apply to **all** categories of governor, elected or appointed.

The **procedure** is the same as for removal and is the **same for maintained schools and academies**. Reasons for suspension in **academies** are (3) above.

Whilst suspended the governor should still receive notice of and paperwork for meetings.

Disqualification

Maintained schools

Refer to August 2015 Statutory Guidance to The School Governance (Constitution) (England) Regulations 2012.

Grounds for disqualification fall into three broad categories:

- general grounds;
- grounds that apply to particular categories of governor; and
- grounds that arise because of particular failings or actions on the part of the governor (ie. Not attendance).

All the grounds for disqualification apply also to associate members except that associate members can be registered pupils at the school and can be under 18.

Attendance – Governors and Associate Members who fail to attend meetings without the consent of the governing body for a continuous period of six months are disqualified from continuing to hold office as a governor at that school. This period applies from the date of the first meeting which the

governor failed to attend. (This does not apply to the Headteacher or to foundation governors appointed by virtue of their office).

Academies – The grounds for disqualification are set out in articles 68 – 80 of the model articles. The rules around disqualification for **non-attendance** are the same as for maintained schools, and the Governing Body must resolve that the relevant governor's office is vacated.